

1 license, WIL999, for four or five channels -- frequencies,  
2 one license, we knew that once these companies hit that,  
3 that system was dead in the water. It couldn't handle it  
4 because we were talking about 700 or 800 mobiles.

5 Q I guess I want to go back to my original question  
6 though.

7 A Okay.

8 Q What I am trying to find out from you is as far as  
9 you were concerned, DLB was concerned, was there any  
10 timeframe within which you needed to obtain additional  
11 spectrum in order to accommodate the request from this large  
12 company?

13 A Like we had X days to get our frequencies and get  
14 them up and running, is that --

15 Q Yes. Well, not necessarily days, but did you have  
16 any timeframe in mind where you knew you needed to have that  
17 spectrum within a certain time period?

18 A We worked with Command Data on how they were  
19 progressing along, and once their equipment was ready , we  
20 had to be ready with the frequencies. But a certain date  
21 you ask, there wasn't just a set date, say March the 1st it  
22 had to be, or something like that.

23 Q Now, did they -- when they approached you did they  
24 say, we want to do this. We would like for you guys to  
25 obtain the spectrum, and we expect six months from now we'll

1     probably be able to implement this program, or eight months  
2     from now, whatever?

3           A     You are hitting it real close there. That's kind  
4     of the spread line -- the line we had, and we needed to have  
5     our frequencies in place hopefully in '96.

6           Q     Okay. So as soon as you were approached by this  
7     company, as I understand it, you and Pat, and Diane and  
8     David discussed this?

9           A     Correct.

10          Q     And --

11          A     And our sales manager.

12          Q     And the sales manager. Who was that?

13          A     Randy Stafford.

14          Q     And decided that you needed to obtain more  
15     spectrum? Was that a -- you know, was that a group  
16     decision, a committee decision?

17          A     We kicked it around, and this is what we had to  
18     do. If we wanted to pursue this, we had to start making our  
19     plans, and this was one meeting after the next, and it could  
20     be we would sit down with a cup of coffee and talk about it,  
21     where will we stand, where does Command Data stand with  
22     this. And Randy worked with both Command Data and with  
23     ours, so, you know, it was a group kind of discussion, you  
24     know, we need to do this.

25          Q     How did you find out what spectrum was available

1 at that time?

2 A We had -- we had the -- 480 was the only thing  
3 available. There was nothing else in the marketplace; no  
4 800; 450 community repeaters would not work. It had to go  
5 to the 480 system.

6 Q How did you know that?

7 A Because they had to have private, private  
8 conversations, and I know there was no 800. Nine hundreds,  
9 there wasn't any place to get any 900s.

10 Q Did you personally search out to see -- search the  
11 FCC's records or whatever records to determine what  
12 frequencies were available that you could apply for?

13 A I authorized John Black to do that.

14 Q Okay. And John Black is who?

15 A He's with Spectrum Licensing.

16 Q Had you worked with Mr. Black before?

17 A After -- doing the 800 system, we worked with GE  
18 and with Ms. Lynch up there. She was from GE. John Black  
19 worked for GE also, and he knew us, and it was kind of --  
20 you know, he was looking for business.

21 Q What type of business is Mr. Black or did Mr.  
22 Black run at that time?

23 A In Dallas? He was working for GE main office over  
24 there.

25 Q No, I'm sorry. When you contacted him regarding

1 finding out about what spectrum was available, what kind of  
2 business was it that he was --

3 A That was the business he was doing.

4 Q Okay. He was researching Spectrum?

5 A No, he was doing the licensing preparations for  
6 different people.

7 Q Okay.

8 A And Judy, he may have contacted me or I might have  
9 contacted him, but I think maybe he contacted me because I  
10 wouldn't know but he did know us from GE. I think he might  
11 have did some work with them at the time they had -- I'm not  
12 sure.

13 Q And when did you contact John Black?

14 A Oh, ma'am, I --

15 Q Or he contacted you? When did you contract with  
16 him for him to search for spectrum? I know you may not know  
17 the specific date, but do you know approximately?

18 A It was probably '94; '94, '95, or something like  
19 that.

20 JUDGE STEINBERG: Okay, I think the witness is  
21 confused. Why don't you relate it back to the large  
22 company.

23 BY MS. LANCASTER:

24 Q It's my understanding that you were contacted in  
25 early '95 by a large company.

1           A     Yes.

2           Q     That by committee a decision was made that you  
3     needed to obtain additional spectrum in order to accommodate  
4     the demands that the large company was going to put upon  
5     you?

6           A     Yes, ma'am.

7           Q     And that you contacted John Black or John Black  
8     happened to contact you about that time, I don't know, but  
9     at some point you contracted with John Black to search for  
10    spectrum, to see what was available. Am I correct so far?

11          A     That's correct. That's correct.

12          Q     After the large company contacted you, let's just  
13    as an example say the large company contacted you on  
14    February the 1st. You said the beginning part of the year.

15          A     Correct.

16          Q     But you didn't give me a specific date.

17                Approximately how long after the contacted you did  
18    you call Mr. Black and ask him to start search for  
19    frequencies for you?

20          A     I looked at a report that I had on the search, and  
21    it was in June of '95, and that's when I got the report; so  
22    sometime the first part of '95 is whenever we contacted John  
23    or John contacted us.

24          Q     Approximately how long does it normally take to  
25    get that type of report? Do you know?

1           A     He run it off of his computer system. Sometime it  
2     took a week.

3           Q     Okay. But you suspect in this particular instance  
4     that it took longer than that?

5           A     Longer than a week? I don't know.

6           JUDGE STEINBERG: I'm confused now because you  
7     said earlier that you were approached by the large company  
8     the first part of '95.

9           THE WITNESS: Correct.

10          JUDGE STEINBERG: And you also -- and then you  
11     contacted John Black early in '95 to look?

12          THE WITNESS: Correct.

13          JUDGE STEINBERG: So what's the June -- oh, I see,  
14     then he gave you a report in June?

15          THE WITNESS: Correct.

16          JUDGE STEINBERG: As to what spectrum was  
17     available?

18          THE WITNESS: Correct.

19          JUDGE STEINBERG: Okay. Then I'm not confused.

20          MS. LANCASTER: Yeah, I was a little confused too  
21     because it seems --

22          THE WITNESS: And it could be May.

23          MS. LANCASTER: -- to have taken longer than I  
24     would have expected.

25          THE WITNESS: But it also could be May because

1     there are several little reports I've got there that he made  
2     for us.

3             BY MS. LANCASTER:

4             Q     So in May or June he came back to you and telling  
5     you what spectrum was available?

6             A     Correct. Now, I didn't get directly with him as  
7     quick as we knew we were going into this. We just knew we  
8     had to -- and that's the report time he made -- that's the  
9     date on that report he made for us.

10            Q     Okay. And after he came back -- did the report  
11     that he give you just list a lot of frequencies, any  
12     frequencies that weren't taken, that didn't --

13            A     No.

14            Q     -- didn't already have licensees?

15            A     No, that's reversed. He gave us a report showing  
16     what was already licensed.

17            Q     Okay.

18            A     And then we had to calculate what was missing.

19            Q     Okay. And did you do that or did Mr. Black? Who  
20     did that?

21            A     I looked at what was missing, and then made a list  
22     and sent to John Black.

23            Q     With what instructions?

24                    (Static interference.)

25            A     To verify if my calculations were right and

1 current, because that report sometime was the highest A or  
2 highest I report and they made a cumulated listing of all  
3 the licenses and everything. And sometimes they were four  
4 or five months behind. And once he got the list he could go  
5 on to their database and figure out how close it is. We  
6 didn't want to apply for anything that was not exclusive.

7 Q So you made a list of what you thought was  
8 available.

9 A Yes, ma'am.

10 Q And sent it to Mr. Black for him to basically  
11 double check to make sure that it was available.

12 A Yes, ma'am.

13 Q Is that correct?

14 A That's correct.

15 Q Okay. And did he at some point thereafter come  
16 back to you confirming what was available and what was not  
17 available?

18 A Correct.

19 Q And when did that occur?

20 A It would have been only a couple of weeks after  
21 that, Judy.

22 Q How long did it take you after you got his  
23 original list in May or June of '95, how long did it take  
24 you to come up with your list of what you thought was  
25 available?



1           A     There was 108 frequencies available, so I had to  
2 go through a lengthy time to figure out what would be the  
3 best ones, and we took the 108 frequencies. And once we  
4 narrowed it down, we listened to the radio frequencies on  
5 the airways to see if there is any bandits out there that's  
6 using the frequencies, or we had interference from somebody  
7 else.

8           Q     And how long did it take you to do that?

9           A     Two weeks, maybe, or so; something like that.

10          Q     So approximately two weeks after you got the  
11 report from Mr. Black listing what frequencies were taken,  
12 you sent him a list of frequencies that were available and  
13 that you were interested in, is that correct?

14          A     That I thought was available.

15          Q     Okay, you thought they were available and you were  
16 interested in them, is that correct?

17          A     Correct.

18          Q     And you asked him to check and make sure that  
19 these were available?

20          A     Correct.

21          Q     At that time you had already determined which of  
22 the frequencies you were interested in though?

23          A     Only the ones in my license at WIL999, and two  
24 that Pat had.

25          Q     I don't understand that response.

1           A     Those were the first licenses that we obtained.

2           Q     Okay.

3           A     And that set the basis for downtown Dallas.

4           Q     Okay. So basically, when you sent your request  
5 back to Mr. Black, you had only listed two frequencies that  
6 you were interested in?

7           A     No, no. The WIL999, we applied for those in June  
8 or July '95. These were for additional frequencies.

9           Q     And how many frequencies did you indicate to Mr.  
10 Black that you were interested in?

11          A     Eight or nine, or something like that at different  
12 sites. Now, basically one site, the ones that we looked at  
13 for Dallas and Fort Worth, we felt Dallas looked okay. We  
14 could have probably used some more. Fort Worth was so-so,  
15 but we needed something up north, another town called Allen.

16          Q     And you needed Allen just to get complete coverage  
17 of the metropolitan area?

18          A     Once these people -- no. Once these mobile datas  
19 come on the air, each site is embedded into the radio, and  
20 once this concrete truck runs from their batch plants, no  
21 matter where they are. They may move one from Fort Worth, a  
22 whole group of them from Fort Worth to Allen if they have  
23 the Allen area. If they have a large pour, and it could be  
24 up there two or three weeks or a month pouring, those trucks  
25 had to have availability to use the Allen and then use

1 Dallas or Fort Worth. Dallas being the main because that's  
2 mostly where they operated from.

3 Q I asked, I believe I asked whether -- that you  
4 were interested in the Allen site because it gave you better  
5 coverage of the metropolitan area. Now, what I understand  
6 you to respond basically is yes, that you needed some -- you  
7 needed coverage up on that northern part where Allen is, and  
8 you didn't have that without that Allen site, is that  
9 correct?

10 A No. What Allen did, it gave us, like you say, a  
11 northern extreme if the trucks were up in that area there.  
12 Dallas took care of -- Dallas has got a large -- you've been  
13 to Dallas, and it's got that NCNB building, which is the  
14 largest one there. Basically a radio system from up there  
15 will stretch out further than the 40-mile range, basically  
16 because it's got such good coverage up there.

17 Now, in the Allen area, which is 30 some odd miles  
18 or so, maybe 35 miles north of Dallas, it would reach there,  
19 but now going on up towards the Red River, which concrete  
20 trucks pour up in there, it needed the Allen system, and it  
21 did get better coverage in that Allen area if the Allen  
22 system was there.

23 Q Okay. The large customer that you said originally  
24 approached you in the beginning of the year '95, was it a  
25 concrete company?

1 A Correct.

2 Q Okay.

3 A Two concrete companies.

4 Q Okay. And they would be using -- they would  
5 possibly need the frequencies up in the Allen area to get  
6 the coverage that they wanted?

7 A Correct.

8 JUDGE STEINBERG: Are you at a convenient breaking  
9 point for lunch?

10 MS. LANCASTER: Sure.

11 JUDGE STEINBERG: Okay, let's go off the record.

12 (Discussion off the record.)

13 JUDGE STEINBERG: Okay, we're back on the record.

14 We will take a lunch break now and we will be back  
15 at 1:00. thank you.

16 (Whereupon, at 11:58 a.m., the hearing in the  
17 above-entitled matter was recessed, to resume at 1:00 p.m.,  
18 this same day, Monday, February 26, 2001.)

19 //

20 //

21 //

22 //

23 //

24 //

25 //



1 Q Okay. And you stated that you had chosen  
2 approximately eight or nine frequencies from the list that  
3 John Black had sent to you that you were interested in,  
4 about eight or nine of those frequencies, is that correct?

5 A Yes, ma'am.

6 Q And after you chose those frequencies, you sent  
7 that list of the frequencies you were interested in back to  
8 John Black, is that correct?

9 A More than eight or nine because he had to run kind  
10 of a -- see if they were still available, and then apply  
11 those to the license, yes, ma'am.

12 Q Okay. And how long did it take after -- I believe  
13 you stated that it took you about two weeks to cull through  
14 the 108 frequencies he sent you originally and to narrow the  
15 list down and send your list back to him.

16 A Yes, ma'am.

17 Q How long then did it take for him to go over the  
18 list that you sent back to him?

19 A I'd have to say probably a week or so. It  
20 depended on his busy schedule.

21 Q And what happened after that?

22 A The final list -- I don't know if John sent it  
23 back to us or through the applications that was put into  
24 those customers -- I mean, those license numbers.

25 Q Okay, when you say the final list, what do you

1 mean by the "final list"?

2 A The eight or nine licenses that we needed, and I  
3 think the frequencies from the list we gave John to narrow  
4 down, I believe that John put the frequencies in on the  
5 license because it didn't -- and then told us what they  
6 were.

7 Q Okay. John prepared applications for eight or  
8 nine frequencies from the list.

9 A Yes, ma'am.

10 Q Is that correct?

11 A Correct.

12 Q And were all of the applications prepared  
13 approximately the same time period?

14 A Approximately the same.

15 Q Within how much time of each other? When was the  
16 first one prepared? Do you recall?

17 A No, I do not.

18 Q Would he have immediately upon you picking the  
19 eight or nine frequencies, would he have gone ahead  
20 immediately and prepared the applications?

21 A I would hope he did but I don't know if he  
22 immediately did.

23 Q Do you recall how much time it took before he told  
24 the applications were done?

25 A No.

1 Q Whose name did you put these applications in?  
2 What were the names of the applicants?

3 A It was the Sumpters.

4 Q By the Sumpters, do you mean Jim, Norma, Melissa  
5 and Jennifer?

6 A Correct.

7 Q Okay.

8 A Sue.

9 Q Sue, you mean Carolyn Lutz?

10 A Carolyn Lutz. O.C. and two for David.

11 Q How about Ruth Bearden?

12 A Ruth Bearden was not for 90 units. It was typed  
13 up, the letter sent -- the letter typed up and sent in, and  
14 it was not correctly -- correct when it was there, and we  
15 didn't say 90 or how many, and I guess that was an  
16 assumption that John and I -- you know, John assumed it's  
17 going to be 90, but that was not for 90.

18 Q Okay, but let me go back because I'm a little bit  
19 confused. The frequencies that you finally decided to apply  
20 for, is Ruth Bearden's application included among those --

21 A Yes.

22 Q -- frequencies?

23 A Yes.

24 Q So the applications that Mr. Black would have  
25 prepared approximately simultaneously --



1 A Correct. Excuse me.

2 Q -- within a few days or weeks of each other --

3 A Uh-huh.

4 Q -- would have been for Ruth Bearden, the four  
5 Sumpters, Carolyn Lutz, O.C. Brasher, and two for David.

6 Were both of them put in the name of David or was  
7 one of them put as D.L.? Do you recall?

8 A I don't -- one of them was probably David and one  
9 from D.L., I think.

10 Q Okay.

11 A I'm not -- I'm not positive on that.

12 Q And all of these frequencies were going to be at  
13 the Allen site, is that correct?

14 A Allen site.

15 Q And basically, you wanted these frequencies to  
16 accommodate this potential big customer that was coming on?

17 A Correct.

18 Q Who provided the information to John Black that  
19 was needed to prepare each of these applications?

20 A It was the information from the Sumpters -- who  
21 sent the letter to?

22 Q Who gave the information to John Black?

23 A It was sent over our stationery by Susan to him to  
24 mail but we --

25 Q Susan, who is Susan?

1 A Carolyn Lutz. I'm sorry.

2 Q At whose direction did Sue or Carolyn --

3 JUDGE STEINBERG: Say -- let's say Ms. Lutz.

4 MS. LANCASTER: Okay.

5 THE WITNESS: Okay, Lutz.

6 JUDGE STEINBERG: Refer to her by her last name.

7 MS. LANCASTER: Okay.

8 THE WITNESS: Lutz.

9 JUDGE STEINBERG: Instead of Susan.

10 (Local sound interference.)

11 BY MS. LANCASTER:

12 Q Did you direct Ms. Lutz to fax information to Mr.

13 Black?

14 A I may have. I do not know.

15 Q Would anyone else have directed her to fax

16 information to Mr. Black?

17 A I doubt it.

18 Q She didn't do it on her own, did she?

19 A That I do not know. I don't -- I don't believe  
20 so. And like I say, I don't know for sure if I directed  
21 her, or I didn't even look at it after it was typed, that's  
22 for sure.

23 Q As far as you know, did anyone else have any  
24 conversations with Mr. Black regarding these applications?

25 A No, not that I know of.

1 Q Did you ever see any information that had been  
2 sent to Mr. Black by anyone else --

3 A Yes.

4 Q -- regarding these applications?

5 A Not by anybody else, but what was sent to him.

6 Q You saw the information sent to him --

7 A Correct.

8 Q -- that was sent to him at your direction?

9 A Correct.

10 Q Is that correct?

11 A Yes.

12 Q At the time that Ms. Lutz faxed the information to  
13 Mr. Black, she was employed at DLB, is that correct?

14 A Correct.

15 Q What was her position at DLB at that time?

16 A Secretary, information, front desk.

17 Q Was she office manager or just secretary?

18 A That may have come later, but she might have been  
19 the office manager at that time.

20 Q Do you recall?

21 A No.

22 Q In either event, she worked for you, is that  
23 correct?

24 A No, she worked for Pat and Diane.

25 Q Would she have considered you her boss?

1           A     I never gave her corrections except for things  
2     that she didn't do, like for example, did you do this and  
3     why didn't you do that. But if she did something negative,  
4     I went to her boss.

5           Q     But if you had asked her to fax information, she  
6     would have done it --

7           A     Yes.

8           Q     -- as an employee of DLB with you being an officer  
9     of DLB, is that correct?

10          A     That's correct.

11          Q     Mr. Brasher, would you turn to Exhibit No. 66 in  
12     the direct case binders in front of you?

13                     (Pause.)

14                     BY MS. LANCASTER:

15          Q     Do you have it?

16          A     Yes, ma'am.

17          Q     The first two pages of Exhibit 66 list names and  
18     addresses and phone numbers I'm assuming is what those  
19     numbers are, for Metroplex, David Brasher, Norma Sumpter,  
20     D.L. Brasher, Jim Sumpter, Ruth Bearden, Carolyn Lutz, O.C.  
21     Brasher, and Melissa Sumpter, and Jennifer Hill. I guess  
22     there are 10 on list. Is that what was faxed?

23          A     These two pages; yes, ma'am.

24          Q     Yes, sir.

25          A     Yes, ma'am.

1 Q That was what was faxed to John Black from your  
2 office?

3 A Yes, ma'am.

4 Q Do you recall the date of that fax? It's not  
5 written on here.

6 A No, I do not.

7 It had to be -- no, I do not.

8 Q Pages 3 -- page 3 of that exhibit has some writing  
9 on it where it has frequencies and by each frequency it has  
10 one of the names that were in the first two pages.

11 Are you familiar with that?

12 A I'm not familiar with that.

13 Q Would that have been sent to you by John Black?

14 A I do not believe so.

15 Q You don't recall seeing it?

16 A No, I do not recall seeing it.

17 Q What about pages 4 and 5 of that exhibit? Page 4  
18 and 5 of this exhibit is the same -- they are duplicates of  
19 page 1 and 2, except that the PCIA control numbers have been  
20 added next to each name. Are you familiar with that  
21 document, that --

22 A No, I've seen the first two, but I don't recall  
23 seeing these.

24 Q Okay.

25 JUDGE STEINBERG: Do you recognize any of the

1 handwriting or printing on pages 3 through 5?

2 (Away from microphone.)

3 THE WITNESS: That's a left-hander, and I don't  
4 know anyone that's left-handed in our organization.

5 JUDGE STEINBERG: What makes you think it's a  
6 left-hander?

7 THE WITNESS: The way the checkmarks are made.  
8 That's the only way I think it's left-handed. Right-handed  
9 would probably --

10 JUDGE STEINBERG: Apart from the check marks, do  
11 you recognize the printing?

12 THE WITNESS: No, sir.

13 JUDGE STEINBERG: How about page 5, do you  
14 recognize the handwriting next to those numbers?

15 THE WITNESS: No, sir.

16 MS. LANCASTER: Your Honor, if I might interrupt.  
17 We understand that this constitutes the two pages that were  
18 sent to John Black, and that the remainder were pages that  
19 John Black faxed back to DLB, and Mr. Black can testify as  
20 to that when he arrives.

21 JUDGE STEINBERG: Okay.

22 MS. LANCASTER: Or perhaps he didn't fax them  
23 back. Maybe they are just his notes. But we can -- we can  
24 have that clarified from Mr. Black.

25 JUDGE STEINBERG: Yes.

1 MS. LANCASTER: I just thought I would see if Mr.  
2 Brasher --

3 THE WITNESS: They are not familiar to me, Judy.

4 MS. LANCASTER: Okay.

5 BY MS. LANCASTER:

6 Q When you sent these names to Mr. Black, did you  
7 give him instructions to go ahead and start filling out  
8 these applications in these names that were on this list at  
9 page 1 and 2 of Exhibit 66?

10 A Correct.

11 (Pause.)

12 THE WITNESS: Judy, may I ask --

13 MS. LANCASTER: I'm sorry.

14 THE WITNESS: May I say something?

15 MS. LANCASTER: Certainly.

16 THE WITNESS: On page 1 of the exhibit, it's got  
17 1's on the side there in Metroplex. I don't remember us  
18 faxing anything that had 1's down the line with Metroplex on  
19 it, or with the 10's.

20 BY MS. LANCASTER:

21 Q The numbers that are on there, the handwritten --

22 A Yes, ma'am.

23 Q -- comments that are on there, you don't recall --

24 A Those being there.

25 Q Okay.

1           A     And with the Metroplex because I don't believe the  
2     license were ever made or ever done for Metroplex --

3           Q     Okay.

4           A     -- in Allen.

5           Q     But the typewritten print that is on this which  
6     provides the names and addresses and phone numbers of the  
7     various parties I have already referenced, you did prepare  
8     that?

9           A     Yes. Our office -- our office prepared that.

10          Q     Okay. I want to go back -- I'm going to ask you  
11     about these licenses individually in a little bit, but I  
12     want to go back first and ask some general questions about  
13     the licenses.

14                 You had already decided, I believe you stated,  
15     that all of these stations that you were going to have put  
16     in these names were going to be located in Allen, is that  
17     correct?

18          A     That's correct.

19          Q     Who paid the prep and application and coordination  
20     fees to have the applications submitted?

21          A     Either come out of the Brasher checking account --  
22     the company Brasher checking account, or Metroplex Two-Way,  
23     but I think it came out of the Brasher checking account.

24          Q     Was there a reason why they were paid out of the  
25     Brasher account as opposed to the DLB accounts?



1           A     That's the way Sumpters accounting set it up to  
2     be.

3           Q     Do you know why they set it up that way?

4           A     No.

5           Q     How much money did all of the fees -- how much  
6     does it cost to pay? What is the prep fee and application  
7     fee and the coordination fee? Do you know?

8           A     It would be only a guess. The FCC probably was  
9     about \$75 a piece.

10          Q     When you say it's a guess, you mean it's just an  
11     estimate?

12          A     Just an estimate.

13          Q     Okay.

14          A     Because I really don't know what it was at that  
15     particular time.

16          Q     Did you sign the check to pay for these fees? Did  
17     you sign --

18          A     No.

19          Q     -- those checks?

20          A     No.

21          Q     Who signed them?

22          A     I'd have to assume it's either Pat or the  
23     accounting office; Pat probably. It could be Diane. I  
24     don't know.

25                 JUDGE STEINBERG: Do the Sumpter accounting people